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CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).

LIFETIME PRODUCTS, INC.,

Case Nos. SA CV 02-763-GLT (MLGx)  
SA CV 02-764-GLT (MLGx)

Plaintiff,

vs.

ORDER GRANTING DEFENDANT'S  
MOTIONS TO TRANSFER VENUE

CORRELL, INC.,

I hereby attest and certify on 12/3/00  
that the foregoing document is a full, true  
and correct copy of the original on file in  
my office, and in my legal custody.

Defendant .

LIFETIME PRODUCTS, INC.,

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Plaintiff,

**DEPUTY CLERK**

vs.

LORI ANDERSON

THE HON COMPANY,

Defendant.

Defendants' Motions for Transfer of Venue are GRANTED.

## I. BACKGROUND

Plaintiff Lifetime Products, a Utah corporation with its principal place of business in Utah, holds United States Patents No. 5,536,552 ('552 patent) and No. 6,431,092 ('092 Patent). Both patents relate to technology used in portable folding tables with a blow-molded plastic top. Defendants Correll Inc. and the Hon Company

1 manufacture blow-molded plastic folding tables.

2 Plaintiff brought two separate suits against Defendants Hon and  
3 Correll in the District of Utah in December 2001 and January 2002,  
4 respectively, alleging Defendants' tables infringed Plaintiff's '552  
5 patent. Also in December 2001 and January 2002, Plaintiff brought  
6 suit in this District against several other parties, who were not  
7 amenable to jurisdiction in Utah, for infringement of the '552  
8 patent.<sup>1/</sup> In February 2002, Northpole LLC and Northpole Limited filed  
9 suit against Plaintiff in the Northern District of California, seeking  
10 a declaratory judgment that Northpole products do not infringe  
11 Plaintiff's '552 patent. In May 2002, Plaintiff filed a motion to  
12 transfer the Northpole case to the District of Utah.

13 In July 2002, the court in the District of Utah denied  
14 Plaintiff's request for a preliminary injunction against Defendants  
15 for infringement of the '552 patent. In August 2002, Plaintiff was  
16 issued the '092 patent and filed two separate suits against Defendants  
17 Hon and Correll in this District alleging the same products at issue  
18 in the Utah suits also infringed Plaintiff's '092 patent. Also in  
19 August 2002, Plaintiff withdrew its motion to transfer the Northpole  
20 case from the Northern District of California to the District of Utah,  
21 and added a counterclaim for infringement of the '092 patent. In  
22 October 2002, Plaintiff added infringement of the '092 patent as an  
23 additional claim in its cases against other parties pending in this  
24 Court.

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25  
26 <sup>1/</sup>The cases filed in the Central District of California,  
27 Lifetime Products, Inc. v. Alton Industries Inc., et al., SACV-  
28 02-350-GLT (ANx), and Lifetime Products Inc. v. Wen's Phoenix  
Corp., et al., SACV-01-1217-GLT (ANx), are both assigned to this  
Court.

1 Defendants Hon and Correll bring Motions to Transfer Venue to the  
2 District of Utah pursuant to 28 U.S.C. §1404(a).

3 II. DISCUSSION

4 A court may transfer an action to "any other district or division  
5 where it might have been brought." 28 U.S.C. § 1404(a). The  
6 transferee federal district court must possess subject matter  
7 jurisdiction, personal jurisdiction, and venue must be proper. See  
8 e.g., Hoffman v. Blaski, 363 U.S. 335 (1960). In addition, the Court  
9 must consider three general factors: (1) convenience of the parties;  
10 (2) convenience of the witnesses; and (3) the "interests of justice."  
11 See 28 U.S.C. § 1404; A.J. Industries, Inc. v. United States Dist.  
12 Ct., 503 F.2d 384, 387 (9th Cir. 1974).

13 In this case, the interests of justice and judicial economy  
14 require transfer of the action.

15 A. Proper Venue in the District of Utah

16 The District of Utah has subject matter jurisdiction and personal  
17 jurisdiction over the parties, and venue is proper since the alleged  
18 infringement of the '092 patent arises from the same accused products  
19 manufactured by Defendants at issue in the Utah suit.

20 B. Convenience of Parties

21 Defendants argue the convenience of parties weighs in favor of  
22 transfer because the Plaintiff is a Utah citizen, and Defendants are  
23 already defending a suit about the same products in the District of  
24 Utah. Defendants contend they will be subject to substantial  
25 inconvenience and expense if required to transport and duplicate  
26 evidence concerning their accused products. Plaintiff argues,  
27 however, it would be subject to inconvenience if required to litigate  
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1 the same patent in an additional forum.

2 A transfer is not appropriate if the result is merely to shift  
3 the inconvenience from one party to another. Plasco Inc. v. Auten,  
4 1995 WL 354870 (N.D. Cal. 1995). This factor does not weigh in favor  
5 of transfer.

6 C. Convenience of Witnesses

7 The convenience of the witnesses is determined by reference to  
8 their residence in relation to the district in which the action is  
9 pending and the proposed transferee district. See Cochran v. NYP  
10 Holdings, Inc., 58 F. Supp.2d 1113, 1119 (C.D. Cal. 1998). Where the  
11 transfer is based on the convenience of the witnesses, the party  
12 seeking transfer must designate: (1) the key witnesses to be called;  
13 (2) where the witnesses are located; (3) a general statement of what  
14 their testimony will cover; and (4) why such testimony is relevant or  
15 necessary. See A.J. Indust., Inc., supra, 503 F.2d at 384. The  
16 materiality of the prospective witnesses' testimony is determinative  
17 of the extent to which their convenience will be weighted.  
18 See Scheidt v. Klein, 956 F.2d 963, 966 (10th Cir. 1992). Little or  
19 no weight is given to the convenience of expert witnesses. Promuto v.  
20 Waste Management, Inc., 44 F.Supp.2d 628, 639-640 (S.D.N.Y. 1999).

21 Defendant Hon identifies Carl Stanford, the inventor of the '092  
22 patent as a witness who lives in Utah and may inconvenienced by a  
23 trial in California, but does not describe the content or relevancy of  
24 his testimony. Defendant Correll does not identify any witnesses who  
25 would be inconvenienced by a trial in California. Defendant Hon also  
26 claims its expert and Plaintiff's expert are both located in or near  
27 Utah, but the convenience of expert witnesses are given little weight.

1 This factor does not weigh in favor of transfer.

2 D. Interests of Justice

3 The interests of justice include a balancing of factors such as  
4 relative ease and access to proof, availability of compulsory process,  
5 and judicial economy. See Stewart Org., Inc., supra, 487 U.S. at 30.

6 The location of documents and other physical evidence relevant to  
7 the dispute is a factor to be considered in the transfer analysis.  
8 See Creative Tech. Ltd. v. Axtech Sys. Pte, Ltd., 61 F.3d 696, 703  
9 (9th Cir. 1995). Defendant Correll argues much of the relevant  
10 documents and files relating to its products are currently located in  
11 Utah. Plaintiff does not dispute such evidence is located in Utah,  
12 but argues the evidence can be easily reproduced in California. This  
13 factor weighs slightly in favor of transfer.

14 The availability of compulsory process to secure the attendance  
15 of witnesses is a factor to be considered in the transfer analysis.  
16 Reed v. Fine Oil & Chem. Co., 995 F.Supp. 705, 714 (E.D. Tx. 1998).  
17 Defendant Hon claims it may not be able to secure Stanford's  
18 attendance at trial if the case is heard in this court. However, if  
19 he is unavailable, Defendants can present the deposition testimony of  
20 Stanford in lieu of live testimony at trial. This factor does not  
21 weigh in favor of transfer.

22 Judicial economy concerns whether transfer will avoid duplicative  
23 litigation, effect judicial economy, and prevent waste of time and  
24 money. Van Dusen v. Barrack, 376 U.S. 612, 616 (1964); see Cochran,  
25 58 F.Supp.2d at 1119. Defendants argue litigating the cases in this  
26 Court will result in duplication of proof and relitigation on the  
27 issues of Defendants' products and Plaintiff's damages, matter with  
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1 | which the Utah judge is already familiar. Defendants also contend  
2 | transfer is necessary to prevent Plaintiff from receiving duplicative  
3 | damages awards.

4 |       The deciding factor in this case is that an action is already  
5 | pending between these parties on this issue in the District of Utah.  
6 | The courts' interest is having an entire controversy between parties  
7 | tried at one time. It is in the interest of justice to dispose in one  
8 | litigation of all the rights and obligations existing between the  
9 | parties. Rule 18(a), Federal Rules of Civil Procedure; Hargrave v.  
10 | Oki Nursery, Inc., 646 F.2d 716 (C.A.N.Y, 1980); Rolls-Royce Ltd. v.  
11 | U.S., 364 F.2d 415 (Ct. Cl., 1966). Plaintiff could have simply added  
12 | its '092 patent claim to its existing '552 patent claim in Utah.

13 |       Plaintiff argues transfer may lead to inconsistent judgments  
14 | because this Court and the District of Utah may construe the '092  
15 | patent claims differently, and points to the different results the two  
16 | Courts have already reached concerning the '552 patent. The  
17 | inconsistent judgments Plaintiff claim to weigh against transfer are,  
18 | in part, problems of its own creation. Plaintiff chose to initiate  
19 | litigation over the '552 patent in two different forums. Plaintiff  
20 | opted to add a '092 claim to the case currently pending in the  
21 | Northern District of California. As the result of Plaintiff's choice  
22 | of forum to date, the '552 patent will be construed by three different  
23 | judges and the '092 patent will be construed by at least two.  
24 | However, this is not of unusual concern: it frequently happens that a  
25 | patent is litigated by several courts throughout the country.

26 |       This case, between these parties, and on this topic, began in the  
27 | Utah action. This case is really a part of that action. The  
28 |

1 interests of justice and judicial economy require that the entire  
2 controversy be tried at one time in the place it began -- Utah.

3 III. DISPOSITION

4 On balance, the relevant factors weigh in favor of transfer.  
5 Defendants' Motion to Transfer Venue is GRANTED. This action is  
6 ordered transferred to the District of Utah.

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9 DATED: November 27, 2002

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11 GARY M. TAYLOR  
12 UNITED STATES DISTRICT JUDGE  
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ORIGINAL

STERLING A. BRENNAN (CA State Bar No. 126019)  
 ADINA L. WITZLING (CA State Bar No. 211719)  
 MORRISON & FOERSTER LLP  
 19900 MacArthur Boulevard  
 Twelfth Floor  
 Irvine, California 92612-2445  
 Telephone: (949) 251-7500  
 Facsimile: (949) 251-0900

LARRY R. LAYCOCK (Pro Hac Vice Application Pending)  
 DAVID R. WRIGHT (Pro Hac Vice Application Pending)  
 L. REX SEARS (Pro Hac Vice Application Pending)  
 WORKMAN, NYDEGGER & SEELEY  
 60 East South Temple, Suite 1000  
 Salt Lake City, UT 84111  
 Telephone: (801) 533-9800  
 Facsimile: (801) 328-1707

Attorneys for Plaintiff  
 LIFETIME PRODUCTS, INC., A Utah  
 Corporation

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

LIFETIME PRODUCTS, INC., a Utah  
 corporation,

Plaintiff,

v.

CORRELL, INC., a Missouri corporation,  
 Defendant.

SA02-763 DOC(MLGx)  
 Case No.

**COMPLAINT FOR:**

- (1) PATENT INFRINGEMENT;  
 AND  
 (2) INDUCEMENT OF PATENT  
 INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

Plaintiff LIFETIME PRODUCTS, INC. ("Lifetime") hereby complains and  
 alleges against the defendant, Correll, Inc. ("Correll") as follows:

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COMPLAINT FOR PATENT  
 INFRINGEMENT, ETC.



**I. THE PARTIES**

1. Lifetime is a corporation duly organized and existing under the laws of the State of Utah, with its principal place of business in the City of Clearfield, Davis County, Utah.

2. Lifetime alleges on information and belief that Correll, Inc. is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business at 300 Hancock Street, Charleston, Arkansas, 72933.

3. This is an action for patent infringement. The products accused of infringement are folding blow-molded plastic utility tables of a style and design which, Lifetime alleges on information and belief, Correll makes, sells and/or offers for sale within the United States ("the infringing tables").

**II. JURISDICTION AND VENUE**

4. This is a civil action for patent infringement committed by Correll, arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284, and 285.

5. This Court has original subject matter jurisdiction over Lifetime's claims for relief, which arise under the laws of the United States, pursuant to 28 U.S.C. §1331 (federal question).

6. This Court also has original subject matter jurisdiction over Lifetime's claims for relief, which arise under acts of Congress relating to patents, pursuant to 28 U.S.C. §1338(a).

7. Lifetime further alleges on information and belief that Correll has transacted business within the State of California and within the Central District of California out of which Lifetime's claims in part arise.

8. This Court's exercise of personal jurisdiction over Correll is consistent with the Constitutions of the United States and the State of California. Moreover, this

1 Court has personal jurisdiction over Correll pursuant to California Code of Civil  
2 Procedure § 410.10.

3 9. Pursuant to 28 U.S.C. § 1391(c), Correll is deemed to reside in this  
4 judicial district for purposes of venue.

5 10. Venue is proper in this judicial district pursuant to, at least, 28 U.S.C. §  
6 1391(b)(1), 28 U.S.C. § 1391(b)(2), and 28 U.S.C. § 1400(b).

7 **III. FACTUAL BACKGROUND**

8 11. Lifetime is an award-winning innovator in the field of sports equipment,  
9 and consumer and office products, which are constructed of high quality steel and  
10 blow-molded plastic.

11 12. Several of Lifetime's most successful innovations have been in the  
12 design and development of lightweight and highly durable folding tables that combine  
13 metal frames and blow-molded plastic tops.

14 13. Lifetime's folding tables are protected, inter alia, by a portfolio of  
15 patents, including United States Patent No. 6,431,092 (the "'092 Patent"), reproduced  
16 as Exhibit A attached hereto and incorporated herein by this reference.

17 14. Lifetime is the owner by assignment of the '092 Patent.

18 15. Lifetime has not licensed Correll to practice the '092 Patent, and Correll  
19 does not have any right or authority to license others to practice the '092 Patent.

20 **IV. CLAIMS FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **(Infringement of the '092 Patent)**

23 16. By this reference Lifetime realleges and incorporates the foregoing  
24 paragraphs 1 through 15, as though fully set forth herein.

25 17. Lifetime alleges on information and belief that Correll is making, selling  
26 and/or offering for sale within the United States folding plastic tables that fall within  
27 the scope of one or more of the claims of the '092 Patent.  
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19. The conduct of Correll as set forth hereinabove gives rise to a cause of action for infringement of the '092 Patent, pursuant to 35 U.S.C. §§ 271(a) and 281.

20. Lifetime alleges on information and belief that Correll is infringing the '092 Patent in willful and deliberate disregard of Lifetime's rights.

21. By reason of the foregoing, Lifetime is entitled to injunctive and monetary relief against Correll, pursuant to 35 U.S.C. §§ 283-85, as more fully set forth herein below.

## SECOND CLAIM FOR RELIEF

**(Inducement of Infringement of the '092 Patent)**

22. By this reference Lifetime realleges and incorporates the foregoing paragraphs 1 through 21, as though fully set forth herein.

23. Lifetime alleges on information and belief that Correll is actively inducing others to use, sell, and/or offer for sale, within the United States, without authority or license to do so from Lifetime, folding plastic tables that fall within the scope of one or more of the claims of the '092 Patent.

24. The conduct of Correll as set forth hereinabove gives rise to a claim for relief for inducement of infringement of the '092 Patent, pursuant to 35 U.S.C. § 271(b).

25. Lifetime alleges on information and belief that Correll is inducing infringement of the '092 Patent in willful and deliberate disregard of Lifetime's rights.

26. By reason of the foregoing, Lifetime is entitled to injunctive and monetary relief against Correll, pursuant to 35 U.S.C. §§ 283-85, as more fully set forth herein below.

**V. PRAYER FOR RELIEF**

WHEREFORE, Lifetime prays for judgment against Correll as follows:

A. An Order of this Court temporarily, preliminarily, and permanently enjoining Correll, its agents and servants, and any and all parties acting in concert with any of them, from directly or indirectly infringing in any manner the '092 Patent, whether by making, using, selling, offering to sell, or importing into the United States any table or other product falling within the scope of any of the claims of the '092 Patent, or inducing others to engage in any of the aforementioned acts or otherwise, pursuant to at least 35 U.S.C. § 283;

B. An order of this Court directing Correll to destroy its entire stock of infringing products within the United States, pursuant to at least 35 U.S.C. § 283;

C. An award of damages to Lifetime, in an amount to be proven at trial, pursuant to at least 35 U.S.C. § 284;

D. An award of treble damages to Lifetime, pursuant to at least 35 U.S.C. § 285

E. Prejudgment interest, pursuant to at least 35 U.S.C. § 284;

F. An award of Lifetime's costs in bringing this action, pursuant to at least 35 U.S.C. § 284;

G. An award of Lifetime's attorneys' fees and expenses, pursuant to at least 35 U.S.C. § 285;

H. Post-judgment interest, pursuant to at least 28 U.S.C. § 1961(a); and

I. For such other and further relief as the Court deems just, proper, and equitable.

**DEMAND FOR JURY**

Plaintiff demands TRIAL BY JURY of all causes so triable.

Dated: August 13, 2002

STERLING A. BRENNAN  
ADINA L. WITZLING  
MORRISON & FOERSTER LLP

LARRY R. LAYCOCK  
DAVID R. WRIGHT  
L. REX SEARS  
WORKMAN, NYDEGGER & SEELEY

By Sterling A. Brennan by ALO  
Sterling A. Brennan  
Attorneys for Plaintiff  
LIFETIME PRODUCTS, INC., A Utah  
Corporation

Exhibits/  
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